

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE FEBRUARY 25, 2014

**SENATE BILL**

**No. 843**

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**Introduced by Senator Correa**

January 7, 2014

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An act to amend Sections 44030.5, 44242.5, 44930, 44932, 44934, 44936, ~~44937, 44938,~~ 44939, 44940, 44943, 44944, ~~44945,~~ and 44947 of, ~~to repeal Section 44941 of,~~ and to add Sections ~~44930.5, 44932.5,~~ ~~and 44944.5~~ 44930.5 and 44944.2 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 843, as amended, Correa. School employees: discipline: dismissal and suspension.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified reasons. Existing law authorizes a governing board of a school district to suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee, or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, as provided. Existing law additionally authorizes the governing board of a school district to immediately suspend a permanent employee for specified reasons, as provided.

This bill would, among other things, add ~~serious and~~ egregious conduct, as defined, to the list of specified reasons for which a permanent employee may be dismissed. ~~The bill would instead authorize the governing board of a school district to suspend without pay for more than 30 workdays those employees for any of the listed reasons authorizing dismissal or suspension and pursuant to certain procedures.~~

~~The bill would also authorize the suspension of those employees for up to 30 workdays pursuant to separate procedures, as specified. The bill would also authorize revise the reasons for which the governing board of a school district is authorized to immediately suspend a permanent employee for specified charges employee.~~

(2) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of one member selected by the governing board, one member selected by the employee, and an administrative law judge as the 3rd member. ~~Existing law requires the selected members to, among other things, have 5 years' experience within the past 10 years in the discipline of the employee. Existing law requires in a dismissal or suspension proceeding against a permanent employee, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee's demand for a hearing. Existing law prescribes various procedures for the hearing, including, among others, a prohibition against the use of evidence of any nature relating to matters occurring more than 4 years prior to the filing of a notice in a decision relating to the termination or suspension of any employee.~~

~~This bill would instead require each hearing to be heard by a hearing panel, consisting of, require, for specified charges, that a commission on professional competence to be comprised of only an administrative law judge, and for other specified charges, consisting of a Commission on Professional Competence. The bill would instead require the selected members of the commission to have only 3 years' experience in the elementary or secondary grade level discipline of the employee, as defined. judge, and that the matter be submitted for decision within 12 months from the date of the employee's demand for a hearing, as provided. For those same charges, the bill would authorize testimony to be given or evidence introduced relating to matters that occurred more than 4 years before the date of the filing of the notice unless it is not relevant, and would provide for the allocation of costs for the hearing and any appeals by requiring, among other things, that the employee pay for the costs of the hearing if the administrative law judge determines that the employee's decision to demand a hearing was a frivolous tactic that wasted public resources.~~

(3) ~~Existing law requires in a dismissal or suspension proceeding against a permanent employee, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee's demand for a hearing. Existing law prescribes various~~

~~procedures for the hearing, including, among others, a prohibition against discovery occurring later than 30 calendar days after the employee is served with a copy of the accusation, and a prohibition against the use of evidence of any nature relating to matters occurring more than 4 years prior to the filing of a notice in a decision relating to the termination or suspension of any employee.~~

~~This bill would instead require that any hearing be submitted for decision within 12 months from the date of the employee's demand for a hearing, as provided. The bill would revise various procedures for the conduct of those hearings. The bill would, among other things, require the administrative law judge on the hearing panel to hold a final status conference at least 7 calendar days before the hearing is to commence, as provided. The bill would also delete the prohibitions identified above relating to discovery and instead require discovery to be completed at least 7 calendar days before the final status conference, and would authorize the use of evidence relating to matters that occurred more than 4 years ago in the resolution of a charge of serious and egregious conduct, or with respect to any charge, for purposes of rebuttal, impeachment, or showing that notice was given. The bill would require the employee to pay the expenses of the hearing, except as provided, if the hearing panel determines that the employee's decision to demand a hearing was a frivolous tactic that wasted public resources.~~

~~(4) Existing law declares any contract or agreement, express or implied, made by an employee to waive certain benefits is null and void, except as provided.~~

~~This bill would, notwithstanding that provision, authorize an employee to waive certain due process rights as part of a contract or agreement between the school district, the employee, and if applicable, the employee's exclusive representative.~~

~~(5)~~

~~(3) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15 and September 15 in any year.~~

~~This bill would instead authorize the governing board of a school district to give the notice at any time of year. The bill would also require the governing board of a school district to provide a copy of the notice to the collective bargaining unit representing the employee within one~~

~~week of serving notice to the employee. year; except as specified, provided that a notice of dismissal or suspension given outside of the instructional year of the schoolsite where the employee is physically employed is in writing served upon the employee personally. The bill would require provide that a notice of the governing board of the school district to an employee of its intention to dismiss or suspend the employee, together with written charges filed or formulated pursuant to those procedures, be is sufficient to initiate a hearing, as prescribed, and would prohibit the governing board of the school district from being required to file or serve a separate accusation. The bill would authorize the governing board of a school district to amend written charges, as provided, and The bill would, if an employee demands a hearing, authorize the governing board to either rescind its action or schedule a hearing on the matter. The bill also would, for specified charges, authorize the governing board to rescind the notice at any time before the matter is submitted for decision.~~

~~(6) Existing law prohibits the governing board of a school district from acting upon any charges of unprofessional conduct or unsatisfactory performance, unless at least 45 or 90 calendar days, respectively, prior to the date of the filing of the charges the governing board of the school district, or its authorized representative, has given the employee written notice, as specified.~~

~~This bill would delete those provisions and instead prohibit the governing board from acting upon certain charges unless at least 30 workdays before the date of the filing of the charges the governing board, or its authorized representative, has given the employee written notice.~~

~~(7)~~

~~(4) Existing law prohibits information of a derogatory nature to be entered into an employee's personnel records unless the employee is given an opportunity to review and comment on that information.~~

~~This bill would, notwithstanding that provision, prohibit, among other things, the governing board of a school district or its authorized representative from amending, renewing, or entering into an agreement that requires the removal from a school employees' employee's records any evidence of credible complaints, substantiated investigations, or discipline relating to the school employee's commission, or alleged commission, of serious and egregious conduct or other misconduct, as specified. The bill would specify that provisions in the bill authorizing~~

~~an employee's waiver of his or her due process employment rights, as provided, does not supersede these provisions.~~

~~(8)~~

(5) Existing law provides that a certificated employee may be charged with a mandatory leave of absence offense *or an optional leave of absence offense* for certain sex offenses or *certain offenses involving controlled substance offenses with the exception of substances other than* marijuana, mescaline, peyote, or tetrahydrocannabinols. Existing law requires the governing board of a school district to immediately place a certificated employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense *and authorizes the governing board to immediately place the employee on compulsory leave of absence if the employee is charged with an optional leave of absence offense.*

This bill would additionally authorize a certificated employee to be charged with a mandatory leave of absence offense for the commission of a violent or serious felony, as specified. *The bill would also add controlled substances offenses involving marijuana, mescaline, peyote, or tetrahydrocannabinols to the lists of mandatory and optional leave of absence offenses, as specified.* Because this bill would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

~~(9)~~

(6) This bill would also make conforming changes and numerous nonsubstantive changes, and would delete obsolete references.

~~(10)~~

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 44030.5 of the Education Code is amended to read:

44030.5. (a) The superintendent of a school district or county office of education, or the administrator of a charter school, employing a person with a credential shall report any change in the employment status of the credentialholder to the commission not later than 30 days after the change in employment status, if the credentialholder, while working in a position requiring a credential, and as a result of an allegation of misconduct or while an allegation of misconduct is pending, is dismissed, is nonreelected, resigns, is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse action, retires, or is otherwise terminated by a decision not to employ or reemploy.

(b) For purposes of subdivision (a), a change of employment status due solely to unsatisfactory performance pursuant to paragraph (6) of subdivision (a) of Section 44932 or a reduction in force pursuant to Sections 44955 to 44958, inclusive, is not a result of an allegation of misconduct.

(c) The failure to make the report required by subdivision (a) is unprofessional conduct and may subject the superintendent of the school district or county office of education, or the administrator of a charter school, to adverse action by the commission.

(d) (1) Notwithstanding Section 44030, refusing or willfully neglecting to make the report required by subdivision (a) is a misdemeanor, punishable by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).

(2) All fines imposed pursuant to this subdivision are the personal responsibility of the superintendent of the school district or county office of education, or the administrator of a charter school, and may not be paid or reimbursed with public funds.

SEC. 2. Section 44242.5 of the Education Code is amended to read:

44242.5. (a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials.

1 (b) The committee has jurisdiction to commence an initial  
2 review upon receipt of any of the following:

3 (1) (A) Official records of the Department of Justice, of a law  
4 enforcement agency, of a state or federal court, and of any other  
5 agency of this state or another state.

6 (B) For purposes of subparagraph (A), “agency of this state”  
7 has the same meaning as that of “state agency” as set forth in  
8 Section 11000 of the Government Code.

9 (2) An affidavit or declaration signed by a person or persons  
10 with personal knowledge of the acts alleged to constitute  
11 misconduct.

12 (3) (A) A statement from an employer notifying the commission  
13 that, as a result of an allegation of misconduct, or while an  
14 allegation of misconduct is pending, a credentialholder has been  
15 dismissed, nonreelected, suspended for more than 10 days, or  
16 placed pursuant to a final adverse employment action on unpaid  
17 administrative leave for more than 10 days, or has resigned or  
18 otherwise left employment.

19 (B) The employer shall provide the notice described in  
20 subparagraph (A) to the commission not later than 30 days after  
21 the dismissal, nonreelection, suspension, placement on unpaid  
22 administrative leave, resignation, or departure from employment  
23 of the employee.

24 (C) For purposes of subparagraphs (A) and (B), a change in  
25 status due solely to unsatisfactory performance pursuant to  
26 paragraph (6) of subdivision (a) of Section 44932 or a reduction  
27 in force pursuant to Sections 44955 to 44958, inclusive, is not a  
28 result of an allegation of misconduct.

29 (4) A notice from an employer that a complaint was filed with  
30 the school district alleging sexual misconduct by a credentialholder.  
31 Results of an investigation by the committee based on this  
32 paragraph shall not be considered for action by the committee  
33 unless there is evidence presented to the committee in the form of  
34 a written or oral declaration under penalty of perjury that confirms  
35 the personal knowledge of the declarant regarding the acts alleged  
36 to constitute misconduct.

37 (5) A notice from a school district, employer, public agency, or  
38 testing administrator of a violation of Section 44420, 44421.1,  
39 44421.5, or 44439.

1 (6) (A) An affirmative response on an application submitted  
2 to the commission as to any conviction, adverse action on, or denial  
3 of, a license, or pending investigation into a criminal allegation or  
4 pending investigation of a noncriminal allegation of misconduct  
5 by a governmental licensing entity.

6 (B) Failure to disclose any matter set forth in subparagraph (A).

7 (c) An initial review commences on the date that the written  
8 notice is mailed to the applicant or credentialholder that his or her  
9 fitness to hold a credential is under review. Upon commencement  
10 of a formal review pursuant to Section 44244, the committee shall  
11 investigate all alleged misconduct and the circumstances in  
12 mitigation and aggravation. The investigation shall include, but  
13 not be limited to, all of the following:

14 (1) Investigation of the fitness and competence of the applicant  
15 or credentialholder to perform the duties authorized by the  
16 credential for which he or she has applied or that he or she presently  
17 holds.

18 (2) Preparation of a summary of the applicable law, a summary  
19 of the facts, contested and uncontested, and a summary of any  
20 circumstances in aggravation or mitigation of the allegation.

21 (3) Determination of probable cause for an adverse action on  
22 the credential. If the allegation is for unprofessional or immoral  
23 conduct, the committee, in any formal review conducted pursuant  
24 to Section 44244 to determine probable cause, shall permit the  
25 employer of the credentialholder to be present while testimony is  
26 taken. If the allegation of unprofessional or immoral conduct  
27 involves sexual abuse, the employer shall be examined in the  
28 meeting for any relevant evidence relating to the sexual abuse.

29 (A) If the committee determines that probable cause for an  
30 adverse action does not exist, the committee shall terminate the  
31 investigation.

32 (B) If the committee determines that probable cause for an  
33 adverse action on the credential exists, upon receipt of a request  
34 from an applicant or a credentialholder pursuant to Section  
35 44244.1, the commission shall initiate an adjudicatory hearing, as  
36 prescribed by Chapter 5 (commencing with Section 11500) of Part  
37 1 of Division 3 of Title 2 of the Government Code, by filing an  
38 accusation or statement of issues.

39 (d) The committee has jurisdiction to commence a formal review  
40 pursuant to Section 44244 upon receipt of any of the following:



1 (1) (A) Official records of a state or federal court that reflect a  
2 conviction or plea, including a plea of nolo contendere, to a  
3 criminal offense or official records of a state court that adjudge a  
4 juvenile to be a dependent of the court pursuant to Section 300 of  
5 the Welfare and Institutions Code due to allegations of sexual  
6 misconduct or physical abuse by a credentialholder or applicant.

7 (B) Nothing in subparagraph (A) shall be construed to relieve  
8 the commission from the confidentiality provisions, notice, and  
9 due process requirements set forth in Section 827 of the Welfare  
10 and Institutions Code.

11 (2) An affidavit or declaration signed by a person or persons  
12 with personal knowledge of the acts alleged to constitute  
13 misconduct.

14 (3) A statement described in paragraph (3) of subdivision (b).

15 (4) Official records of a governmental licensing entity that  
16 reflect an administrative proceeding or investigation, otherwise  
17 authorized by law or regulation, which has become final.

18 (5) A notice described in paragraph (5) of subdivision (b).

19 (6) A response or failure to disclose, as described in paragraph  
20 (6) of subdivision (b).

21 (e) (1) Upon completion of its investigation, the committee  
22 shall report its actions and recommendations to the commission,  
23 including its findings as to probable cause, and if probable cause  
24 exists, its recommendations as to the appropriate adverse action.

25 (2) The findings shall be available, upon its request, to the  
26 employing or last known employing school district, or, if adverse  
27 action is recommended by the committee and the credentialholder  
28 has not filed a timely appeal of the recommendation of the  
29 committee pursuant to Section 44244.1, upon a request made within  
30 five years of the date of the committee's recommendations to a  
31 school district providing verification that the credentialholder has  
32 applied for employment in the school district. The findings, for all  
33 purposes, shall remain confidential and limited to school district  
34 personnel in a direct supervisory capacity in relation to the person  
35 investigated. Any person who otherwise releases findings received  
36 from the committee or the commission, absent a verified release  
37 signed by the person who is the subject of the investigation, shall  
38 be guilty of a misdemeanor.

(3) The findings shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation.

(f) (1) Except as provided in paragraph (2) and, notwithstanding subdivision (b), for purposes of determining whether jurisdiction exists under subdivision (b), the commission, in accordance with Section 44341, may make inquiries and requests for production of information and records only from the Department of Justice, a law enforcement agency, a state or federal court, and a licensing agency of this state or a licensing agency of another state.

(2) For purposes of determining whether jurisdiction exists, paragraph (1) does not apply to release of personnel records.

SEC. 3. Section 44930 of the Education Code is amended to read:

44930. (a) Subject to Section 44930.5, the governing board of a school district shall accept the resignation of any employee and shall fix the time when the resignation takes effect, which, except as provided by subdivision (b), shall not be later than the close of the school year during which the resignation has been received by the governing board of the school district.

(b) Notwithstanding any other law, but subject to Section 44930.5, an employee and the governing board of a school district may agree that a resignation will be accepted at a mutually agreed upon date not later than two years beyond the close of the school year during which the resignation is received by the governing board of the school district.

SEC. 4. Section 44930.5 is added to the Education Code, to read:

44930.5. Notwithstanding any other law, on or after January 1, 2015, the governing board of a school district or its authorized representative shall not amend, renew, or enter into an agreement that does either of the following:

(a) Requires the removal from a school employee's records of any evidence of credible complaints, substantiated investigations, or discipline relating to the school employee's commission of, or alleged commission of, ~~serious and egregious conduct~~, as *conduct* described in *paragraphs (1), (3), and (10) of Section 44932*. This prohibition does not preclude the removal of documents containing unfounded, erroneous, or false allegations from a school

1 employee's permanent personnel file, as otherwise required by  
2 law.

3 (b) Prevents an employee of the school district from complying  
4 with the requirements of Section 44947 or prevents an employee  
5 of the school district from sending to the Commission on Teacher  
6 Credentialing a report, including, but not limited to, a report  
7 mandated by Section 44030.5, of any change in employment status  
8 of a school district employee alleged to have engaged in ~~serious~~  
9 ~~and egregious conduct~~ *conduct described in paragraph (1), (3),*  
10 *or (10) of Section 44932.* For purposes of this section, a change in  
11 employment status includes, but is not limited to, dismissal,  
12 nonreelection, resignation, ~~suspension~~ *suspension*, or placement  
13 on administrative leave for more than 10 days as a final adverse  
14 action, retirement, or termination by a decision not to employ or  
15 reemploy.

16 SEC. 5. Section 44932 of the Education Code is amended to  
17 read:

18 44932. (a) A permanent employee shall not be dismissed  
19 except for one or more of the following causes:

20 (1) Immoral conduct.

21 (2) ~~Unprofessional conduct, including, but not limited to,~~  
22 ~~excessive absences, excessive tardiness, and insubordination.~~  
23 ~~conduct.~~

24 (3) ~~Serious and egregious~~ *Egregious* conduct as specified in  
25 subdivision (b).

26 (4) Commission, aiding, or advocating the commission of acts  
27 of criminal syndicalism, as prohibited by Chapter 188 of the  
28 Statutes of 1919, or in any amendment to that chapter.

29 (5) Dishonesty.

30 (6) Unsatisfactory performance.

31 (7) Evident unfitness for service.

32 (8) Physical or mental condition unfitting him or her to instruct  
33 or associate with children.

34 (9) Persistent violation of or refusal to obey the school laws of  
35 the state or reasonable regulations prescribed for the government  
36 of the public schools by the state board or by the governing board  
37 of the school district employing him or her.

38 (10) Conviction of a felony or of any crime involving moral  
39 turpitude.

(11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) For purposes of this section, ~~“serious and egregious~~ “egregious conduct” means any of the following:

(1) Any offense defined in Section 44010 or 44011.

(2) Any offense defined in Section 187 or 206 of, or Sections 11165.1 to 11165.6, inclusive, of, the Penal Code.

(3) Any offense under state or federal law that is punishable by death or life imprisonment without the possibility of parole.

*(c) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to a school district that has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.*

~~SEC. 6. Section 44932.5 is added to the Education Code, to read:~~

~~44932.5. (a) The governing board of a school district may suspend without pay for more than 30 workdays a permanent certificated employee, or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944, and on the grounds listed in Section 44932 or 44933. This authorization shall not apply to any school district that has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.~~

~~(b) The governing board of a school district may suspend without pay for up to 30 workdays a permanent certificated employee, or in a school district with an average daily attendance of less than 250 pupils, a probationary employee, in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~SEC. 7:~~

~~SEC. 6. Section 44934 of the Education Code is amended to read:~~

1 44934. (a) Upon the filing of written charges, duly signed and  
2 verified by the person filing them, with the governing board of a  
3 school district, or upon a written statement of charges formulated  
4 by the governing board of a school district, charging that there  
5 exists cause, as specified in Section 44932 or 44933, for the  
6 dismissal or suspension ~~for more than 30 workdays~~ of a permanent  
7 employee of the district, the governing board of the school district  
8 may, upon majority vote, except as provided in this article if it  
9 deems the action necessary, give notice to the permanent employee  
10 of its intention to dismiss him or her or suspend him or her ~~for~~  
11 ~~more than 30 workdays~~ at the expiration of 30 days from the date  
12 of service of the notice, unless the employee demands a hearing  
13 as provided in this article. Proceedings for suspensions ~~for more~~  
14 ~~than 30 workdays~~ may be initiated pursuant to this section only if  
15 the governing board of the school district has not adopted a  
16 collective bargaining agreement pursuant to subdivision (b) of  
17 Section 3543.2 of the Government Code.

18 (b) Any written statement of charges shall specify instances of  
19 behavior and the acts or omissions constituting the charge so that  
20 the teacher will be able to prepare his or her defense. It shall, where  
21 applicable, state the statutes and rules that the teacher is alleged  
22 to have violated.

23 (c) A notice by the governing board of a school district to an  
24 employee of its intention to dismiss him or her or suspend him or  
25 ~~her for more than 30 workdays; her;~~ together with written charges  
26 filed or formulated pursuant to this section, shall be sufficient to  
27 initiate a hearing pursuant to Section 11503 of the Government  
28 Code, and the governing board of the school district shall not be  
29 required to file or serve a separate accusation.

30 ~~(d) The governing board of a school district may amend written~~  
31 ~~charges pursuant to Sections 11507 and 11516 of the Government~~  
32 ~~Code.~~

33 (e)

34 (d) This section shall also apply to the suspension of  
35 probationary employees ~~for more than 30 workdays~~ in a school  
36 district with an average daily attendance of less than 250 pupils  
37 that has not adopted a collective bargaining agreement pursuant  
38 to subdivision (b) of Section 3542.2 of the Government Code.

1     ~~SEC. 8.~~

2     ~~SEC. 7.~~ Section 44936 of the Education Code is amended to  
3 read:

4     44936. (a) The notice of dismissal or suspension ~~for more than~~  
5 ~~30 workdays~~ in a proceeding initiated pursuant to Section 44934  
6 may be given at any time of year. It shall be in writing and be  
7 served upon the employee personally or by United States registered  
8 mail addressed to the employee at his or her last known ~~address.~~  
9 *address, provided that a notice of dismissal or suspension given*  
10 *outside of the instructional year of the schoolsite where the*  
11 *employee is physically employed shall be in writing and shall be*  
12 *served upon the employee personally.* A copy of the charges filed,  
13 containing the information required by Section 11503 of the  
14 Government Code, together with a copy of the provisions of this  
15 article, shall be attached to the notice. No additional documentation  
16 shall be required to ~~notice~~ *notify* the employee. ~~A copy of the notice~~  
17 ~~shall also be sent to the collective bargaining unit that represents~~  
18 ~~the employee within one week of serving the employee with the~~  
19 ~~notice of dismissal or suspension for more than 30 workdays.~~

20     (b) *Notwithstanding subdivision (a), the notice of dismissal or*  
21 *suspension in a proceeding involving only charges of unsatisfactory*  
22 *performance initiated pursuant to Section 44934 shall only be*  
23 *given during the instructional year of the schoolsite where the*  
24 *employee is physically employed. However, a notice of dismissal*  
25 *or suspension in a proceeding involving charges of unsatisfactory*  
26 *performance may be initiated pursuant to paragraph (2) of*  
27 *subdivision (b) of Section 44938.*

28     ~~(b)~~

29     (c) An employee who demands a hearing within 30 days after  
30 service of the notice dismissal or suspension ~~for more than 30~~  
31 ~~workdays~~ shall file a notice of defense, as described in Sections  
32 11505 and 11506 of the Government Code.

33     ~~SEC. 9.~~ Section 44937 of the Education Code is amended to  
34 read:

35     44937. ~~In a proceeding for a dismissal or suspension for more~~  
36 ~~than 30 workdays initiated pursuant to Section 44934, if the~~  
37 ~~employee does not demand a hearing by filing a written request~~  
38 ~~for hearing with the governing board, he or she may be dismissed~~  
39 ~~or he or she may be suspended without pay for a specific period~~

1 of time for more than 30 workdays at the expiration of the 30-day  
2 period.

3 ~~SEC. 10.~~ Section 44938 of the Education Code is amended to  
4 read:

5 44938. (a) The governing board of a school district shall not  
6 act upon any charges initiated pursuant to paragraph (2), (6), or  
7 (9) of subdivision (a) of Section 44932, or Section 44933 unless  
8 at least 30 workdays before the date of the filing, the governing  
9 board of the school district or its authorized representative has  
10 given the employee against whom the charge is filed, written notice  
11 of the conduct leading to the charges, specifying the nature of the  
12 conduct with specific instances of behavior and with particularity  
13 as to furnish the employee an opportunity to correct his or her  
14 faults and overcome the grounds for the charge. The written notice  
15 shall include the evaluation made pursuant to Article 11  
16 (commencing with Section 44660) of Chapter 3, if applicable to  
17 the employee.

18 (b) ~~For purposes of this section, “workday” means any day~~  
19 ~~that the employee is normally expected to work, regardless of~~  
20 ~~whether he or she actually does work.~~

21 ~~SEC. 11.~~

22 ~~SEC. 8.~~ Section 44939 of the Education Code is amended to  
23 read:

24 44939. Upon the filing of written charges pursuant to paragraph  
25 (1), (3), (4), (5), (7), (8), (10), or (11) or (10) of subdivision (a) of  
26 Section 44932, duly signed and verified by the person filing them  
27 with the governing board of a school district, or upon a written  
28 statement of charges pursuant to paragraph (1), (3), (4), (5), (7),  
29 (8), (10), or (11) or (10) of subdivision (a) of Section 44932  
30 formulated by the governing board of a school district, to dismiss  
31 a permanent employee of the school district, the governing board  
32 of the school district may, if it deems the action necessary,  
33 immediately suspend the employee from his or her duties and give  
34 notice to the permanent employee of his or her suspension, and  
35 that 30 days after service of the notice, the permanent employee  
36 will be dismissed, unless he or she demands a hearing.

37 ~~SEC. 12.~~

38 ~~SEC. 9.~~ Section 44940 of the Education Code is amended to  
39 read:

1 44940. (a) For purposes of this section, “charged with a  
2 mandatory leave of absence offense” is defined to mean charged  
3 by complaint, information, or indictment filed in a court of  
4 competent jurisdiction with the commission of any sex offense as  
5 defined in Section 44010, with the commission of any offense  
6 involving aiding or abetting the unlawful sale, use, or exchange  
7 to minors of controlled substances listed in Schedule I, II, or III,  
8 as contained in Sections 11054, 11055, and 11056 of the Health  
9 and Safety Code, ~~with the exception of marijuana, mescaline,~~  
10 ~~peyote, or tetrahydrocannabinols, Code~~ or with the commission  
11 of a violent or serious felony, as listed in subdivision (c) of Section  
12 667.5 of, or subdivision (c) of Section 1192.7 of, the Penal Code.

13 (b) For purposes of this section, “charged with an optional leave  
14 of absence offense” is defined to mean a charge by complaint,  
15 information, or indictment filed in a court of competent jurisdiction  
16 with the commission of any controlled substance offense as defined  
17 in Section 44011 or 87011, or a violation or attempted violation  
18 of Section 187 of the Penal Code, or Sections 11357 to 11361,  
19 inclusive, of, or Section 11363, 11364, or 11370.1 of, the Health  
20 and Safety Code, insofar as these sections relate to any controlled  
21 substances ~~except marijuana, mescaline, peyote, or~~  
22 ~~tetrahydrocannabinols.~~ *substances.*

23 (c) For purposes of this section and Section 44940.5, the term  
24 “school district” includes county offices of education.

25 (d) (1) If a certificated employee of a school district is charged  
26 with a mandatory leave of absence offense, as defined in  
27 subdivision (a), upon being informed that a charge has been filed,  
28 the governing board of the school district shall immediately place  
29 the certificated employee on compulsory leave of absence. The  
30 duration of the leave of absence shall be until a time not more than  
31 10 days after notice of the judgment in the proceedings has been  
32 received by the school district. No later than 10 days after receipt  
33 of the complaint, information, or indictment described by  
34 subdivision (a), the school district shall forward a copy to the  
35 Commission on Teacher Credentialing.

36 (2) Upon receiving a copy of a complaint, information, or  
37 indictment described in subdivision (a) and forwarded by a school  
38 district, the Commission on Teacher Credentialing shall  
39 automatically suspend the employee’s teaching or service  
40 credential. The duration of the suspension shall be until a time not



1 more than 10 days after notice of the judgment in the proceedings  
2 has been received by the Commission on Teacher Credentialing.

3 (e) (1) If a certificated employee of a school district is charged  
4 with an optional leave of absence offense as defined in subdivision  
5 (b), the governing board of the school district may immediately  
6 place the certificated employee upon compulsory leave in  
7 accordance with the procedure in this section and Section 44940.5.  
8 If any certificated employee is charged with an offense deemed to  
9 fall into both the mandatory and the optional leave of absence  
10 categories, as defined in subdivisions (a) and (b), that offense shall  
11 be treated as a mandatory leave of absence offense for purposes  
12 of this section. No later than 10 days after receipt of the complaint,  
13 information, or indictment described by subdivision (a), the school  
14 district shall forward a copy to the Commission on Teacher  
15 Credentialing.

16 (2) Upon receiving a copy of a complaint, information, or  
17 indictment described in subdivision (a) and forwarded by a school  
18 district, the Commission on Teacher Credentialing shall  
19 automatically suspend the employee's teaching or service  
20 credential. The duration of the suspension shall be until a time not  
21 more than 10 days after the notice of the judgment in the  
22 proceedings has been received by the school district.

23 ~~SEC. 13. Section 44941 of the Education Code is repealed.~~

24 ~~SEC. 14.~~

25 *SEC. 10.* Section 44943 of the Education Code is amended to  
26 read:

27 44943. ~~The~~ *(a) If an employee who has been served pursuant*  
28 *to Section 44934 with a notice of the governing board's intention*  
29 *to dismiss or suspend him or her demands a hearing, the governing*  
30 *board shall either rescind its action or schedule a hearing on the*  
31 *matter.*

32 *(b) The governing board may, without prejudice, rescind a notice*  
33 *served pursuant to Section 44934 for a charge pursuant to*  
34 *paragraph (1), (3), or (10) of subdivision (a) of Section 44932 at*  
35 *any time before the matter is submitted for decision.*

36 ~~SEC. 15. Section 44944 of the Education Code is amended to~~  
37 ~~read:~~

38 ~~44944. (a) (1) In a proceeding for dismissal or suspension for~~  
39 ~~more than 30 workdays initiated pursuant to Section 44934, if a~~  
40 ~~hearing is requested by the employee, the matter shall be submitted~~

1 for decision within 12 months from the date of the employee's  
2 demand for a hearing. The administrative law judge on the hearing  
3 panel may grant extensions beyond 12 months for good cause, and  
4 shall grant extensions beyond 12 months upon a stipulation by all  
5 parties.

6 (2) The hearing shall be initiated, conducted, and a decision  
7 made in accordance with Chapter 5 (commencing with Section  
8 11500) of Part 1 of Division 3 of Title 2 of the Government Code.  
9 However, the hearing date shall be established after consultation  
10 with the employee and the governing board, or their  
11 representatives, and the hearing panel shall have all of the power  
12 granted to an agency in that chapter, except that the right of  
13 discovery of the parties shall not be limited to those matters set  
14 forth in Section 11507.6 of the Government Code but shall include  
15 the rights and duties of any party in a civil action brought in a  
16 superior court pursuant to Title 4 (commencing with Section  
17 2016.010) of Part 4 of the Code of Civil Procedure. In all cases,  
18 discovery shall be completed at least seven calendar days before  
19 the final status conference required by subdivision (b).

20 (3) (A) If the right of discovery granted under paragraph (2) is  
21 denied by either the employee or the governing board, all of the  
22 remedies specified in Chapter 7 (commencing with Section  
23 2023.010) of Title 4 of Part 4 of the Code of Civil Procedure shall  
24 be available to the party seeking discovery and the court of proper  
25 jurisdiction, to entertain his or her motion, shall be the superior  
26 court of the county in which the hearing will be held.

27 (B) The time periods specified in this section and of Chapter 5  
28 (commencing with Section 11500) of Part 1 of Division 3 of Title  
29 2 of the Government Code and of Title 4 (commencing with  
30 Section 2016.010) of Part 4 of the Code of Civil Procedure shall  
31 not be applied so as to deny discovery in a hearing conducted  
32 pursuant to this section.

33 (C) Delays incurred pursuant to this paragraph shall not count  
34 toward the deadline by which the matter must be submitted for  
35 decision required by paragraph (1).

36 (4) The superior court of the county in which the hearing will  
37 be held may, upon motion of the party seeking discovery, suspend  
38 the hearing so as to comply with the requirement of the preceding  
39 paragraph.

1     ~~(5) A witness shall not be permitted to testify at the hearing~~  
2     ~~except upon oath or affirmation. Testimony shall not be given or~~  
3     ~~evidence introduced relating to matters that occurred more than~~  
4     ~~four years before the date of the filing of the notice unless it is~~  
5     ~~relevant to the resolution of a charge pursuant to paragraph (3) of~~  
6     ~~subdivision (a) of Section 44932 or, with respect to any charge, it~~  
7     ~~is relevant for purposes of rebuttal, impeachment of a witness, or~~  
8     ~~showing that notice was given.~~

9     ~~(b) The administrative law judge on the hearing panel shall hold~~  
10    ~~a final status conference at least seven calendar days before the~~  
11    ~~hearing is to commence to rule on procedural matters, including,~~  
12    ~~but not limited to, challenges to the qualifications of members of~~  
13    ~~the Commission on Professional Competence, as specified in~~  
14    ~~paragraph (2) of subdivision (c), if applicable, discovery disputes,~~  
15    ~~and other procedural motions. The administrative law judge on~~  
16    ~~the hearing panel may require other status or case management~~  
17    ~~conferences as necessary.~~

18    ~~(c) (1) If the employee is charged with a charge pursuant to~~  
19    ~~paragraph (2), (6), or (9) of subdivision (a) of Section 44932, a~~  
20    ~~Commission on Professional Competence shall conduct the hearing~~  
21    ~~provided for in this section and shall comprise the hearing panel.~~  
22    ~~One member of the Commission on Professional Competence shall~~  
23    ~~be selected by the employee, one member shall be selected by the~~  
24    ~~governing board, and the third member shall be an administrative~~  
25    ~~law judge of the Office of Administrative Hearings who shall be~~  
26    ~~chairperson of the Commission on Professional Competence, a~~  
27    ~~voting member of the Commission on Professional Competence,~~  
28    ~~and responsible for performing all duties required of an~~  
29    ~~administrative law judge by this article, ruling on procedural~~  
30    ~~motions, and ensuring that the legal rights of the parties are~~  
31    ~~protected at the hearing. If either the governing board or the~~  
32    ~~employee for any reason fails to select a Commission on~~  
33    ~~Professional Competence member at least 30 calendar days before~~  
34    ~~the date of the hearing, the failure shall constitute a waiver of the~~  
35    ~~right to selection, and the county board of education or its specific~~  
36    ~~designee shall immediately make the selection. If the county board~~  
37    ~~of education is also the governing board of the school district or~~  
38    ~~has by statute been granted the powers of a governing board, the~~  
39    ~~selection shall be made by the Superintendent, who shall be~~

1 reimbursed by the school district for all costs incident to the  
2 selection.

3 (2) (A) The member selected by the governing board and the  
4 member selected by the employee shall not be related to the  
5 employee and shall not be employees of the district initiating the  
6 dismissal or suspension and shall hold a currently valid credential  
7 and have at least three years' experience within the past 10 years  
8 in the elementary or secondary grade level discipline of the  
9 employee.

10 (B) For purposes of subparagraph (A), "elementary grade level"  
11 means kindergarten and grades 1 to 6, inclusive, and "secondary  
12 grade level" means grades 7 to 12, inclusive.

13 (3) If an employee is charged with a charge pursuant to  
14 paragraph (1), (3), (4), (5), (7), (8), (10), or (11) of subdivision (a)  
15 of Section 44932, the hearing panel shall be comprised solely of  
16 an administrative law judge of the Office of Administrative  
17 Hearings.

18 (d) (1) For a charge pursuant to paragraph (2), (6), or (9) of  
19 subdivision (a) of Section 44932, or Section 44933, the decision  
20 of the Commission on Professional Competence shall be made by  
21 a majority vote. For all other charges, the decision shall be made  
22 solely by the administrative law judge.

23 (2) The hearing panel shall prepare a written decision containing  
24 findings of fact, determinations of issues, and a disposition that  
25 shall be, solely, one of the following:

26 (A) That the employee should be dismissed.

27 (B) That the employee should be suspended for a specific period  
28 of time without pay.

29 (C) That the employee should not be dismissed or suspended.

30 (3) The decision of the hearing panel that the employee should  
31 not be dismissed or suspended shall not be based on nonsubstantive  
32 procedural errors committed by the school district or the governing  
33 board unless the errors are prejudicial errors.

34 (4) The hearing panel shall not have the power to dispose of the  
35 charge of dismissal by imposing probation or other alternative  
36 sanctions.

37 (5) The decision of the hearing panel shall be deemed to be the  
38 final decision of the governing board.

1     ~~(6) The governing board may adopt from time to time rules and~~  
2     ~~procedures not inconsistent with this section as may be necessary~~  
3     ~~to effectuate this section.~~

4     ~~(7) The governing board and the employee shall have the right~~  
5     ~~to be represented by counsel before the hearing panel.~~

6     ~~(e) (1) If the Commission on Professional Competence member~~  
7     ~~selected by the governing board or the member selected by the~~  
8     ~~employee is employed by any school district in this state, the~~  
9     ~~member shall, during any service on a Commission on Professional~~  
10    ~~Competence, continue to receive salary, fringe benefits,~~  
11    ~~accumulated sick leave, and other leaves and benefits from the~~  
12    ~~district in which the member is employed, but shall receive no~~  
13    ~~additional compensation or honorariums for service on the~~  
14    ~~Commission on Professional Competence.~~

15    ~~(2) If service on a Commission on Professional Competence~~  
16    ~~occurs during summer recess or vacation periods, the member shall~~  
17    ~~receive compensation proportionate to that received during the~~  
18    ~~current or immediately preceding contract period from the~~  
19    ~~member's employing district, whichever amount is greater.~~

20    ~~(f) (1) If the hearing panel determines that the employee should~~  
21    ~~be dismissed or suspended, the governing board shall pay the~~  
22    ~~expenses of the hearing, including the cost of the administrative~~  
23    ~~law judge. The state shall pay any costs incurred under paragraph~~  
24    ~~(2) of subdivision (e), and, if the Commission on Professional~~  
25    ~~Competence comprises the hearing panel, the reasonable expenses,~~  
26    ~~as determined by the administrative law judge on the hearing panel,~~  
27    ~~or another administrative law judge assigned by the Office of~~  
28    ~~Administrative Hearings, of the member selected by the governing~~  
29    ~~board and the member selected by the employee, including, but~~  
30    ~~not limited to, payments or obligations incurred for travel, meals,~~  
31    ~~and lodging, and the cost of the substitute or substitutes, if any,~~  
32    ~~for the member selected by the governing board and the member~~  
33    ~~selected by the employee. The Controller shall pay all claims~~  
34    ~~submitted to the state pursuant to this paragraph from the General~~  
35    ~~Fund, and may prescribe reasonable rules, regulations, and forms~~  
36    ~~for the submission of the claims. The employee and the governing~~  
37    ~~board shall pay their own attorney's fees.~~

38    ~~(2) If the hearing panel determines that the employee should~~  
39    ~~not be dismissed or suspended, the governing board shall pay the~~  
40    ~~expenses of the hearing, including the cost of the administrative~~

1 law judge, any costs incurred under paragraph (2) of subdivision  
2 (e), and, if the Commission on Professional Competence comprises  
3 the hearing panel, the reasonable expenses, as determined by the  
4 administrative law judge on the hearing panel, of the member  
5 selected by the governing board and the member selected by the  
6 employee, including, but not limited to, payments or obligations  
7 incurred for travel, meals, and lodging, the cost of the substitute  
8 or substitutes, if any, for the member selected by the governing  
9 board and the member selected by the employee. The governing  
10 board and the employee shall pay their own attorney's fees.

11 (3) Notwithstanding paragraph (1), the employee shall pay all  
12 the expenses identified in paragraph (1), except the governing  
13 board's attorney fees, if the hearing panel determines that the  
14 employee's decision to demand a hearing was a frivolous tactic  
15 that wasted public resources.

16 (4) As used in this section, "reasonable expenses" shall not be  
17 deemed "compensation" within the meaning of subdivision (e).

18 (5) If either the governing board or the employee petitions a  
19 court of competent jurisdiction for review of the decision of the  
20 Commission on Professional Competence, the payment of expenses  
21 to members of the Commission on Professional Competence  
22 required by this subdivision shall not be stayed.

23 (6) If the decision of the Commission on Professional  
24 Competence is finally reversed or vacated by a court of competent  
25 jurisdiction, either the state, having paid the Commission on  
26 Professional Competence members' expenses, shall be entitled to  
27 reimbursement from the governing board for those expenses, or  
28 the governing board, having paid the expenses, shall be entitled  
29 to reimbursement from the state.

30 (g) If the employee is charged with a charge pursuant to  
31 paragraph (2), (6), or (9) of subdivision (a) of Section 44932, or  
32 Section 44933, the hearing provided for in this section shall be  
33 conducted in a place selected by agreement among the members  
34 of the hearing panel. For all other hearings, the place shall be  
35 selected by the administrative law judge on the hearing panel.

36 *SEC. 11. Section 44944 of the Education Code is amended to*  
37 *read:*

38 44944. (a) (1) In a dismissal or suspension proceeding initiated  
39 pursuant to Section 44934, if a hearing is requested by the  
40 employee, the hearing shall be commenced within 60 days from

1 the date of the employee's demand for a hearing. The hearing shall  
2 be initiated, conducted, and a decision made in accordance with  
3 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
4 3 of Title 2 of the Government Code. However, the hearing date  
5 shall be established after consultation with the employee and the  
6 governing board, or their representatives, and the Commission on  
7 Professional Competence shall have all of the power granted to  
8 an agency in that chapter, except that the right of discovery of the  
9 parties shall not be limited to those matters set forth in Section  
10 11507.6 of the Government Code but shall include the rights and  
11 duties of any party in a civil action brought in a superior court  
12 under Title 4 (commencing with Section 2016.010) of Part 4 of  
13 the Code of Civil Procedure. Notwithstanding any provision to the  
14 contrary, and except for the taking of oral depositions, no discovery  
15 shall occur later than 30 calendar days after the employee is served  
16 with a copy of the accusation pursuant to Section 11505 of the  
17 Government Code. In all cases, discovery shall be completed prior  
18 to seven calendar days before the date upon which the hearing  
19 commences. If any continuance is granted pursuant to Section  
20 11524 of the Government Code, the time limitation for  
21 commencement of the hearing as provided in this subdivision shall  
22 be extended for a period of time equal to the continuance. However,  
23 the extension shall not include that period of time attributable to  
24 an unlawful refusal by either party to allow the discovery provided  
25 for in this section.

26 (2) If the right of discovery granted under paragraph (1) is  
27 denied by either the employee or the governing board, all of the  
28 remedies in Chapter 7 (commencing with Section 2023.010) of  
29 Title 4 of Part 4 of the Code of Civil Procedure shall be available  
30 to the party seeking discovery and the court of proper jurisdiction,  
31 to entertain his or her motion, shall be the superior court of the  
32 county in which the hearing will be held.

33 (3) The time periods in this section and of Chapter 5  
34 (commencing with Section 11500) of Part 1 of Division 3 of Title  
35 2 of the Government Code and of Title 4 (commencing with  
36 Section 2016.010) of Part 4 of the Code of Civil Procedure shall  
37 not be applied so as to deny discovery in a hearing conducted  
38 pursuant to this section.

39 (4) The superior court of the county in which the hearing will  
40 be held may, upon motion of the party seeking discovery, suspend

1 the hearing so as to comply with the requirement of the preceding  
2 paragraph.

3 (5) No witness shall be permitted to testify at the hearing except  
4 upon oath or affirmation. No testimony shall be given or evidence  
5 introduced relating to matters that occurred more than four years  
6 prior to the date of the filing of the notice. Evidence of records  
7 regularly kept by the governing board concerning the employee  
8 may be introduced, but no decision relating to the dismissal or  
9 suspension of any employee shall be made based on charges or  
10 evidence of any nature relating to matters occurring more than  
11 four years prior to the filing of the notice.

12 (b) (1) The hearing provided for in this section shall be  
13 conducted by a Commission on Professional Competence. One  
14 member of the commission shall be selected by the employee, one  
15 member shall be selected by the governing board, and one member  
16 shall be an administrative law judge of the Office of Administrative  
17 Hearings who shall be chairperson and a voting member of the  
18 commission and shall be responsible for assuring that the legal  
19 rights of the parties are protected at the hearing. If either the  
20 governing board or the employee for any reason fails to select a  
21 commission member at least seven calendar days prior to the date  
22 of the hearing, the failure shall constitute a waiver of the right to  
23 selection, and the county board of education or its specific designee  
24 shall immediately make the selection. If the county board of  
25 education is also the governing board of the school district or has  
26 by statute been granted the powers of a governing board, the  
27 selection shall be made by the Superintendent, who shall be  
28 reimbursed by the school district for all costs incident to the  
29 selection.

30 (2) The member selected by the governing board and the  
31 member selected by the employee shall not be related to the  
32 employee and shall not be employees of the district initiating the  
33 dismissal or suspension and shall hold a currently valid credential  
34 and have at least five years' experience within the past 10 years  
35 in the discipline of the employee.

36 (c) (1) The decision of the Commission on Professional  
37 Competence shall be made by a majority vote, and the commission  
38 shall prepare a written decision containing findings of fact,  
39 determinations of issues, and a disposition that shall be, solely,  
40 one of the following:



1 (A) That the employee should be dismissed.

2 (B) That the employee should be suspended for a specific period  
3 of time without pay.

4 (C) That the employee should not be dismissed or suspended.

5 (2) The decision of the Commission on Professional Competence  
6 that the employee should not be dismissed or suspended shall not  
7 be based on nonsubstantive procedural errors committed by the  
8 school district or governing board unless the errors are prejudicial  
9 errors.

10 (3) The commission shall not have the power to dispose of the  
11 charge of dismissal by imposing probation or other alternative  
12 sanctions. The imposition of suspension pursuant to subparagraph  
13 (B) of paragraph (1) shall be available only in a suspension  
14 proceeding authorized pursuant to subdivision~~(b)~~ (c) of Section  
15 44932 or Section 44933.

16 (4) The decision of the Commission on Professional Competence  
17 shall be deemed to be the final decision of the governing board.

18 (5) The board may adopt from time to time rules and procedures  
19 not inconsistent with this section as may be necessary to effectuate  
20 this section.

21 (6) The governing board and the employee shall have the right  
22 to be represented by counsel.

23 (d) (1) If the member selected by the governing board or the  
24 member selected by the employee is employed by any school  
25 district in this state, the member shall, during any service on a  
26 Commission on Professional Competence, continue to receive  
27 salary, fringe benefits, accumulated sick leave, and other leaves  
28 and benefits from the district in which the member is employed,  
29 but shall receive no additional compensation or honorariums for  
30 service on the commission.

31 (2) If service on a Commission on Professional Competence  
32 occurs during summer recess or vacation periods, the member shall  
33 receive compensation proportionate to that received during the  
34 current or immediately preceding contract period from the  
35 member's employing district, whichever amount is greater.

36 (e) (1) If the Commission on Professional Competence  
37 determines that the employee should be dismissed or suspended,  
38 the governing board and the employee shall share equally the  
39 expenses of the hearing, including the cost of the administrative  
40 law judge. The state shall pay any costs incurred under paragraph

1 (2) of subdivision (d), the reasonable expenses, as determined by  
2 the administrative law judge, of the member selected by the  
3 governing board and the member selected by the employee,  
4 including, but not limited to, payments or obligations incurred for  
5 travel, meals, and lodging, and the cost of the substitute or  
6 substitutes, if any, for the member selected by the governing board  
7 and the member selected by the employee. The Controller shall  
8 pay all claims submitted pursuant to this paragraph from the  
9 General Fund, and may prescribe reasonable rules, regulations,  
10 and forms for the submission of the claims. The employee and the  
11 governing board shall pay their own attorney's fees.

12 (2) If the Commission on Professional Competence determines  
13 that the employee should not be dismissed or suspended, the  
14 governing board shall pay the expenses of the hearing, including  
15 the cost of the administrative law judge, any costs incurred under  
16 paragraph (2) of subdivision (d), the reasonable expenses, as  
17 determined by the administrative law judge, of the member selected  
18 by the governing board and the member selected by the employee,  
19 including, but not limited to, payments or obligations incurred for  
20 travel, meals, and lodging, the cost of the substitute or substitutes,  
21 if any, for the member selected by the governing board and the  
22 member selected by the employee, and reasonable attorney's fees  
23 incurred by the employee.

24 (3) As used in this section, "reasonable expenses" shall not be  
25 deemed "compensation" within the meaning of subdivision (d).

26 (4) If either the governing board or the employee petitions a  
27 court of competent jurisdiction for review of the decision of the  
28 commission, the payment of expenses to members of the  
29 commission required by this subdivision shall not be stayed.

30 (5) (A) If the decision of the commission is finally reversed or  
31 vacated by a court of competent jurisdiction, either the state, having  
32 paid the commission members' expenses, shall be entitled to  
33 reimbursement from the governing board for those expenses, or  
34 the governing board, having paid the expenses, shall be entitled  
35 to reimbursement from the state.

36 (B) Additionally, either the employee, having paid a portion of  
37 the expenses of the hearing, including the cost of the administrative  
38 law judge, shall be entitled to reimbursement from the governing  
39 board for the expenses, or the governing board, having paid its  
40 portion and the employee's portion of the expenses of the hearing,

1 including the cost of the administrative law judge, shall be entitled  
2 to reimbursement from the employee for that portion of the  
3 expenses.

4 (f) The hearing provided for in this section shall be conducted  
5 in a place selected by agreement among the members of the  
6 commission. In the absence of agreement, the place shall be  
7 selected by the administrative law judge.

8 *SEC. 12. Section 44944.2 is added to the Education Code, to*  
9 *read:*

10 *44944.2. Notwithstanding Section 44944, if an employee is*  
11 *charged only with one or more charges pursuant to paragraph*  
12 *(1), (3), or (10) of subdivision (a) of Section 44932, all of the*  
13 *following shall apply:*

14 *(a) The Commission on Professional Competence shall be*  
15 *comprised of only an administrative law judge.*

16 *(b) (1) In a proceeding for dismissal or suspension initiated*  
17 *pursuant to Section 44934, if a hearing is requested by the*  
18 *employee, the matter shall be submitted for decision within 12*  
19 *months from the date of the employee's demand for a hearing. The*  
20 *administrative law judge may grant extensions beyond 12 months*  
21 *for good cause, and shall grant extensions beyond 12 months upon*  
22 *a stipulation by all parties.*

23 *(2) To initiate a hearing, amend charges, conduct discovery,*  
24 *conduct a hearing, or render a decision, the administrative law*  
25 *judge shall act in accordance with Chapter 5 (commencing with*  
26 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*  
27 *Code. However, the hearing date shall be established after*  
28 *consultation with the employee and the governing board, or their*  
29 *representatives, and the administrative law judge shall have all*  
30 *of the power granted to an agency in that chapter.*

31 *(3) A witness shall not be permitted to testify at the hearing*  
32 *except upon oath or affirmation. Testimony may be given or*  
33 *evidence introduced relating to matters that occurred more than*  
34 *four years before the date of the filing of the notice unless it is not*  
35 *relevant.*

36 *(c) (1) If the administrative law judge determines that the*  
37 *employee should be dismissed or suspended, the state shall pay*  
38 *the expenses of the hearing, including the cost of the administrative*  
39 *law judge. The Controller shall pay all claims submitted to the*  
40 *state pursuant to this paragraph from the General Fund, and may*

1 *prescribe reasonable rules, regulations, and forms for the*  
2 *submission of the claims. The employee and the governing board*  
3 *shall pay their own attorney's fees.*

4 *(2) If the administrative law judge determines that the employee*  
5 *should not be dismissed or suspended, the governing board shall*  
6 *pay the expenses of the hearing, including the cost of the*  
7 *administrative law judge. The governing board and the employee*  
8 *shall pay their own attorney's fees.*

9 *(3) Notwithstanding paragraph (1), the employee shall pay all*  
10 *the expenses identified in paragraph (1), except the governing*  
11 *board's attorney fees, if the administrative law judge determines*  
12 *that the employee's decision to demand a hearing was a frivolous*  
13 *tactic that wasted public resources.*

14 *(4) If either the governing board or the employee petitions a*  
15 *court of competent jurisdiction for review of the decision of the*  
16 *administrative law judge, the payment of expenses to the*  
17 *administrative law judge required by this subdivision shall not be*  
18 *stayed.*

19 *(5) If the decision of the administrative law judge is reversed*  
20 *or vacated by a court of competent jurisdiction, either the state,*  
21 *having paid the administrative law judge's expenses, shall be*  
22 *entitled to reimbursement from the governing board for those*  
23 *expenses, or the governing board, having paid the expenses, shall*  
24 *be entitled to reimbursement from the state.*

25 ~~SEC. 16. Section 44944.5 is added to the Education Code, to~~  
26 ~~read:~~

27 ~~44944.5. Notwithstanding Section 44924, an employee may~~  
28 ~~waive his or her due process rights afforded pursuant to this article~~  
29 ~~as part of a contract or agreement between the school district, the~~  
30 ~~employee, and if applicable, the employee's exclusive~~  
31 ~~representative. Nothing in this section shall supersede the~~  
32 ~~requirements of Section 44930.5.~~

33 ~~SEC. 17. Section 44945 of the Education Code is amended to~~  
34 ~~read:~~

35 ~~44945. The decision of the hearing panel may, on petition of~~  
36 ~~either the governing board or the employee, be reviewed by a court~~  
37 ~~of competent jurisdiction in the same manner as a decision made~~  
38 ~~by a hearing officer under Chapter 5 (commencing with Section~~  
39 ~~11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~  
40 ~~The court, on review, shall exercise its independent judgment on~~

1 the evidence. The proceeding shall be set for hearing at the earliest  
2 possible date and shall take precedence over all other cases, except  
3 older matters of the same character and matters to which special  
4 precedence is given by law.

5 ~~SEC. 18.~~

6 *SEC. 13.* Section 44947 of the Education Code is amended to  
7 read:

8 44947. If an employee is dismissed based on a charge pursuant  
9 to paragraph (1), (3), ~~(4), (5), (7), (8), (10), or (11)~~ *or (10)* of  
10 subdivision (a) of Section 44932, the governing board shall transmit  
11 to the Commission on Teacher Credentialing and to the county  
12 board of education that issued the certificate under which the  
13 employee was serving at the time of his *or her* dismissal, a copy  
14 of the reporter's transcript of the hearing accompanied by a request  
15 that any certificate issued by the county board of education to the  
16 employee be revoked if the employee is not reinstated upon appeal.

17 ~~SEC. 19.~~

18 *SEC. 14.* If the Commission on State Mandates determines that  
19 this act contains costs mandated by the state, reimbursement to  
20 local agencies and school districts for those costs shall be made  
21 pursuant to Part 7 (commencing with Section 17500) of Division  
22 4 of Title 2 of the Government Code.